



The Comptroller General
of the United States

Washington, D.C. 20548

Westfall

Decision

Matter of: Ricoh Corporation--Reconsideration
File: B-234734.2
Date: May 19, 1989

DIGEST

Dismissal of protest for failure to file comments on agency report in timely manner is affirmed on reconsideration where, despite notice of its responsibility for doing so, protester did not notify General Accounting Office of late receipt of agency report within 10 working days after report was due.

DECISION

Ricoh Corporation requests reconsideration of our April 28, 1989, dismissal of its protest under invitation for bids No. DAEO8-88-B-0064, issued by the Department of the Army for eight lightweight digital facsimile machines. Ricoh protested the solicitation requirement that the units comply with Military Standard 188-161A. We affirm the dismissal.

We dismissed the protest because Ricoh failed to file its comments on the Army's report or notify our Office of its continued interest in the protest within 10 working days after the report due date of April 12, as required under our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1988). Ricoh requests reconsideration on the basis that it did not receive the report until April 17, and that its comments subsequently received in our Office on May 1 therefore were timely.

The filing deadlines in our Regulations, prescribed under the authority of the Competition in Contracting Act of 1984 (CICA), are designed to enable us to comply with the statute's mandate that we resolve protests expeditiously. 31 U.S.C. § 3554 (Supp. IV 1986); U.S. Shutter Co.--Reconsideration, B-219952.2, Jan. 15, 1986, 86-1 CPD ¶ 42. Our Regulations provide that the protester must file comments, request that the protest be decided on the existing record, or request an extension of the comment

045485/138684

period, within 10 working days of receipt of the agency's report on the protest. 4 C.F.R. § 21.3(k). The Regulations further provide that we will assume that the protester received the agency report no later than the scheduled due date as specified in our protest acknowledgment notice, unless we are otherwise advised by the protester. Id.

Ricoh argues that the Regulation does not require that the protester notify us of the late receipt of the report within any specific period of time, and that it therefore satisfied the requirement by advising our Office in its comments filed on May 1 that it had not received the report until April 17.

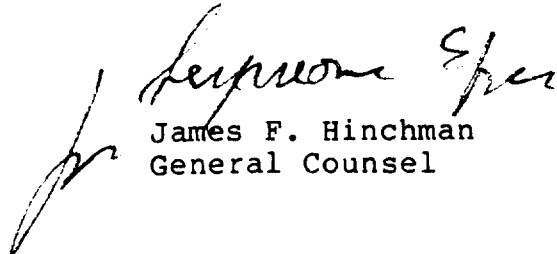
Since 4 C.F.R. § 21.3(k) says that receipt of the agency report will be considered to be the date set forth in the acknowledgment notice, unless we are otherwise informed, we think that it is clear that unless we are notified within 10 working days that the report was not received on the scheduled due date the protest may be dismissed. In addition, we explicitly advised the protester in our acknowledgment notice that it should notify our Office if it did not receive a copy of the report by the scheduled due date and that unless we heard from the protester within 10 working days of our receipt of the report, we would close our file without action. We therefore think that it should have been apparent to Ricoh that notifying our Office on May 1 (13 working days after the report's scheduled due date) that it had not received the report on time did not satisfy the notification requirement.

In our view then, the fact that we received Ricoh's comments within 10 working days of the date the firm actually received the report does not warrant reversal of the dismissal, since Ricoh never advised us of the late receipt, or of the firm's continuing interest in the protest, within the required period of time. Poitra Construction Co.--Reconsideration, B-233084.2, Dec. 21, 1988, 88-2 CPD ¶ 613.

Finally, the protester argues that we should consider the protest even if it is dismissible under our Regulations because it involves an important issue of great interest to the facsimile communications industry. We note, however, that there are currently two other protests from Ricoh

(B-234655 and 234617) concerning the same military standard which is at issue in this case.

Our dismissal of the protest is affirmed.



James F. Hinchman
General Counsel